

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 4086 OF 1985

For Approval of Signature :

Hon'ble MR. JUSTICE B.C. PATEL and Sd/-

MR. JUSTICE S.M. SONI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgments ? Yes
  2. To be referred to the Report or not ? Yes
  3. Whether Their Lordships wish to see the fair copy of the judgment ? No
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder ? No
  5. Whether it is to be circulated to the Civil Judge ? No
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Appearance :

Mr A L Shah, Advocate for the petitioner.

Mr A J Desai, A.G.P. for Respondent Nos. 1 & 2

Mr Prashant G Desai, Advocate for Respondent No. 3

Mr D A Bambhania, Advocate for Respondent Nos. 4 to 15.

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Coram : B.C. Patel & S.M. Soni, JJ.

Date of Decision : 01/07/1996

Oral Judgment : (Per B.C. Patel, J.)

The respondent No. 3, the Municipal Corporation of the City of Ahmedabad (hereinafter referred to as "the Corporation"), moved the State Government for acquisition of land and the State Government, as it appears from the petition, issued a notification under Sec. 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). After following the procedure, the respondent No. 2 - Special Land Acquisition Officer, passed an award on 9.5.1967 acquiring the land of final plot No. 100/C, admeasuring 87 sq.yds. and 1 sq.ft. There is no dispute

about acquisition of land, and hence, we do not discuss that aspect.

2. Petitioner, the then owner of the land, has approached this Court making a grievance that the land was acquired for a public purpose and without the prior permission of the State Government, the land acquired under the Act cannot be used for any other public purpose. Yet in the instant case, the land is being used for other than a public purpose. The petitioner came to know that the respondent No. 3 - Corporation is contemplating to regularise the unauthorised occupants of the said land, and hence, filed a petition in this Court, inter alia, praying to declare the entire acquisition proceedings pursuant to the notification issued under Sec. 4 bearing No. AM.1100/M/LAH 1364/99235-A, dated 23.9.1964 published in the Gujarat Government Gazette dated 15.10.1964 are bad, illegal and against the policy and to quash the said notification and to direct the respondents to hand over peaceful and vacant possession of the land to the petitioner.

3. The survey number under notification was acquired for widening the road. It appears that the Ex-Councilor of the respondent No. 3 - Corporation submitted an application for allotting him a place for business. 15 persons submitted their demand for the land in question and Estate Management Committee by resolution No. 98 on 22.12.1983 forwarded proposal for allotment of the land to the Standing Committee. The Standing Committee, by passing a resolution No. 2763 dated 9.2. 1984, without considering the remarks of the Commissioner approved the resolution of the Estate Committee subject to approval by General Board. General Board, on 24.7.1984, approved the same. Before such resolution, the Commissioner through Secretary pointed out vide letter dated 18.5.1983, Annexure-II, that the Ex-Municipal Councilor has requested a piece of land for business on the ground that his young son is unemployed and he is facing crisis. He pointed out a case to whom the land was allotted as a special case in past. It was pointed out by the Commissioner that by indicating one or the other reasons, recommendations are made and by indicating such examples, it is stated that if the lands are allotted, then there will be no end of the matter. It was also pointed out that such persons are demanding for the lands which are the lands of prime location of a locality. He also pointed out that this causes hindrance or obstruction. Intention in the letter is to the effect that though alternative place is not offered, questions are raised at a later stage to allot place alternatively

and thereafter, proceedings are initiated in a Court, if not allotted. It is also indicated that such persons are giving stall, etc. allocated to them to others as sub-tenants. It was indicated that question of allotment of site to 1500 shopkeepers is pending. Such open space can not be permitted to be occupied. It seems that the opinion of the Commissioner has not been taken into consideration.

4. Apart from that, there is nothing on the record to indicate that either before Estate Management Committee, the Standing Committee or before the General Board it was brought to the notice of the members that the land is acquired under the provisions of the Act for widening the road. Some of the opponents moved this Court by filing a Special Civil Application No. 7898 of 1989 and the Court directed to consider the petition as a representation and to dispose of the same within a period of 15 days from the receipt of the writ. But it seems that the Officer of the Respondent No. 3 - Corporation have not disposed of the said representation on the ground that the resolution is passed. Those persons who are in possession of the land are occupying since 1982. They were trespassers and by passing a resolution their possession came to be regularised on the basis of monthly licence fee. It was the duty of the Standing Committee as well as General Board first to enquire about the title of the land, its ownership, and the reasons of it being vacant and also as to how the land is acquired and for what purpose. The plan should have been placed and if not placed, it was the duty of all concern to call for the plan and to inquire as to the purpose for which such land is to be used. It was the duty of the Commissioner also to indicate in his letter that the land in question was acquired under the provisions of the Act for widening the road.

5. If the land is acquired for a public purpose, then in absence of previous sanction as per Sec. 17 A of the Act as applicable to the State of Gujarat, it is not permissible to use the same land for other public purpose. Section 17-A has been inserted vide Gujarat Act 20 of 1965 which reads as under :-

"17-A. Use of land for any public purpose permitted.- When any land vests in the State Goivernment or in a corporation owned or controlled by the State Government under the provisions of this Act, it shall be lawful with the previous sanction of the State Government, to use such land also for any public purpose other

than that for which its possession was taken."

Thus, reading the Section 17-A it is very clear that without previous sanction of the State Government, the land could not have been used for any other public purpose than for which its possession was acquired. There is no dispute before us that the piece of land was acquired for widening the road which is a public purpose.

The Estate Management Committee, Standing Committee or the General Board of Respondent Corporation has not considered the fact that occupants were requesting for regularising their occupancy on the land which in fact did not belong to Corporation and that was acquired for widening the road. By regularising, the Corporation has not acted in accordance with law.

6. Mr Bambhania was not in a position to contravert before us that in view of this provision, the respondent No. 3 - Corporation through its General Board could not have allotted the land as the same was acquired for the purpose of widening the road. By the resolutions the Corporation has permitted the use of the land and that too for a private purpose. Even if it is a public purpose, but as there is no sanction as contemplated under Sec. 17-A of the Act, the same would be bad.

7. We direct the Corporation to use the land forthwith for the purpose for which it was acquired.

8. In the petition, the petitioner has indicated that the respondent No. 3 - Corporation is likely to pass such a resolution and has prayed for handing over the possession of the land which is acquired. The land is acquired for a public purpose and Mr Desai submitted that it is for the Court while exercising the powers to mould the relief according to the need. In the facts and circumstances of the case, the land was acquired for widening the road and looking to the need, the same must be used for the purpose for which it was acquired unless the State Government has sanctioned to use the land for any other public purpose. As there is no sanction, the Corporation was not entitled to use the land for any other purpose. Therefore, the Corporation under the shelter of that resolution could not say that it is not in a position to evict the respondent Nos. 4 to 15. Allotment is contrary to the provision of the Act.

9. It is high time for the persons dealing with public property to see that no breach of provision is

committed. Respondent Corporation has to discharge its function in accordance with law. Either Estate Management Committee or Standing Committee or the General Board or the Commissioner under the shelter of such resolution cannot be permitted to frustrate the purpose. As a matter of fact, it was not only responsibility but their bounden duty to see that by passing such resolution there is no contravention of any provision of law. Corporation requested the State Government to acquire the land for widening the road and it was the duty of the Commissioner to see that the land is used for widening the road. It was his duty to point out to the members of the Committee and the General Board that land acquired is to be used only for widening the road and if it is used for any other purpose, it would not be in accordance with law. It is the responsibility and duty of elected members to see that no resolution is passed permitting the use of land in contravention of the Act or any law. Such resolutions being contrary to the provisions of law must be quashed.

10. In view of what is stated above, the resolutions passed by (1) Estate Management Committee, on 22.12.1983, being resolution No. 98 of 83/84 in so far as it relates to allotment at Sr. No. 9 in favour of 15 persons, (2) Standing Committee on 8.2.1984 being resolution No. 2763 of 1983/84, and (3) General Board on 24.7.1984 being resolution No. 312 of 1984/85 at Annexures III and IV annexed to the affidavit-in-reply, in so far as it pertains to the land bearing Survey No. 100/Part as indicated in Annexure - "A" to the affidavit-in-reply (land admeasuring 87 sq.yards & 1 sq.ft. of Suvery No. 100/3 of Dariapur Kazipur) are hereby quashed.

11. Mr Desai states that as the resolutions are quashed by this Court, the Corporation shall take action forthwith. Learned Advocate for the respondent Nos. 4 to 15 requests that some reasonable time may be given to vacate the land and accordingly we grant time for six weeks on a condition to file an undertaking before this Court within a period of one week to the effect that vacant and peaceful possession will be handedover after expiry of six weeks and possession of the same shall not be parted with in any manner. Copy of the undertaking duly signed by the concerned respondents shall be supplied to the Corporation. If the undertaking is not filed, the Corporation shall take action forthwith in accordance with law. Rule is made absolute accordingly with no order as to costs.

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ssm. /